IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9358 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NISIRKHAN CHANDKHAN PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 08/02/2000

ORAL JUDGEMENT

#. Heard learned advocate Ms.Banna Datta for learned advocate Ms.K.U.Mishara on behalf of the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 6-6-99 passed by respondent

No. 1 - The Commissioner of Police, Surat against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure- B interalia indicate that two prohibition cases were registered against the petitioner at Nashabandhi Prohibition (West) Police Station on 28-2-99 and 5-3-99 respectively. That in each case, the country made liquor and three wheelers vehicle were seized from the possession of the petitioner / detenu. That both the cases are pending for further investigation. Over and above, that two witnesses on assurance of their anonymity have given their statement dated 2-6-99 about the bootlegging activities of the petitioner and have related to the alleged incidents dated 9-5-99 and 23-5-99 respectively. That on the basis of the said material, the respondent No. 1 - The Commissioner of Police, Surat as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law not being sufficient to prevent the petitioner from continuing his prejudicial anti social activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of unexplained delay in passing the detention order from the date of registered case against the petitioner on which the detention order has been passed. It is elaborated that the last case registered against the petitioner is dated 5-3-1999. That thereafter, there is no indication of any anti social activities alleged against the petitioner except the statements of anonymous witnesses and impugned action of passing the detention order is taken on 6-6-1999 i.e. after the delay of 92 days. There is no explanation much less a reasonable explanation either in the grounds of detention or affidavit in reply.

#. That in the matter of PRADEEP NILKANTH PATURKER VS STATE OF MAHARASHTRA reported vide AIR 1994 SC 656, the Hon'ble Supreme Court has observed that if the inordinate delay between the alleged anti social activities and the

activities and the impugned action of passing the detention order, has not been reasonably explained, live link between the said activities and action having been snapped, the detention order is vitiated. That in the matter of ELESH PATEL VS. THE COMMISSIONER OF POLICE, AHMEDABAD reported vide 1997 (1) GLH 381, this Court also having considered the various authorities of the Hon'ble Supreme Court has also expressed the same view.

#. In the instant case, on scrutiny of papers, the grounds of detention is devoid of any explanation as to why no action has been taken for 92 days from the date of registration of case against the petitioner which has been made basis for the detention order. That despite due service, none of the respondents has filed any affidavit and as such there is no explanation by way of affidavit in reply. Under these circumstances, I am constrained to uphold that the impugned order has been rendered illegal on account of unexplained inordinate delay in taking action.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 6-6-99 passed by respondent No. 1 - The Commissioner of Police, Surat against the petitioner is hereby quashed and set aside. The petitioner - NISIRKHAN CHANDKHAN PATHAN is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 8-2-2000 [A.K.Trivedi, J.]

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